



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,685	12/06/2004	Adi Shfaram	26552U	6629
20529 7590 12/31/2008 THE NATH LAW GROUP 112 South West Street Alexandria, VA 22314				
EXAMINER				
SWEET, THOMAS				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
12/31/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/516,685

Applicant(s)

SHFARAM ET AL.

Examiner

Thomas J. Sweet

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-10, 12-15 and 17-48 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 10 and 20-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 8-9, 12-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see page 13, filed 10/07/2008, with respect to 35 U.S.C. 112, second paragraph have been fully considered and are persuasive. The rejection of claim 11 has been withdrawn.

Applicant's arguments with respect to claims 1-3, 9 and 11-19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 9, 12-15 and 17-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vijil-Rosales (US 4,372,293) or in view of Bellity (FR 2746298 form the IDS) or Dessart (FR 22682284 form the IDS) . Vijil-Rosales discloses a system for breast lifting (title), wherein one or more anchors are fixed (col 1 lines 66-68) to a posture tissue (skeletal), above a desired nipple level (col 3, lines 59-61), with

two (“both ends”) or more readily adjustable suspension members (col 1 lines 66-68) suspended from the one or more anchors and a cradling portion for cradling the breast from below (col 3, lines 57-61), said cradling portion being integral (one member) with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members (the mesh would flattened under the breast and be laterally compressed under the tension of suspending the breast). If the mesh isn’t considered to having a greater width than the two or more readily adjustable suspension members, both Bellity and Dessart teach other breast lifting devices including a cradling portion having a greater width than the suspension member(s) for the purpose of distribution the forces (note this is also extremely well known in the art of organ suspenders to have a wider sling to support the organ). It would have been obvious to one of ordinary skill in the art at the time the invention was made to widen as taught by Bellity or Dessart the sling portion of Vijil-Rosales mesh in order to distribute the forces.

Regarding claim 3, the mesh would flattened under the breast and be laterally compressed under the tension of suspending the breast.

Regarding claims 9, the suspension member and the cradling portion are made of inorganic material (i.e. polyester).

Regarding claims 13 and 14, the one or more anchors and the one or more suspension members are fully capable of being deployable in a non-operable procedure (minimally invasive) and are fully capable of being deployable through stab-incisions formed at a bottom surface of the breast (the minimally invasive processed from the bottom of the breast is intended use for with the device of Vijil-Rosales capable of the use).

Regarding claims 15 and 18, the device of Vijil-Rosales is fully capable of being adjustable and removable at any time (through surgery, col 1 lines 66-68) and both ends of the suspension member are attached to a single anchor (the clavicle, or fully capable of being tied off).

Claim 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vijil-Rosales (US 4,372,293) or in view of Bellity (FR 2746298 form the IDS) or Dessart (FR 22682284 form the IDS). Vijil-Rosales discloses a system as discussed above. However, Vijil-Rosales remains silent as the anchoring structure, specifically hooks are not disclosed. Bellity discloses another system for lifting the breast including hooks (27) for the purpose of anchoring the system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the hook anchor of Bellity for the anchor of Vijil-Rosales on the system of Vijil-Rosales in order to anchor the system. Such a modification amounts to mere substitution of one functionally equivalent anchor for another within the art of breast lifts.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/
Primary Examiner, Art Unit 3774